

Rule 27: Probation: Probation is a creature of statute.....Revised 3/2010

A.R.S. § 13-901 and Rule 27, Ariz. R. Crim. P., generally govern probation. The court's power to impose probation in Arizona is granted to the court by the legislature. "The power of a court to grant probation is not inherent, but is derived from statute, and therefore may be granted only in accordance with statutory authorization." *State v. Woodruff*, 196 Ariz. 359, 360 ¶ 8, 997 P.2d 544, 545. (App. 2000), *accord In re Stephanie N.*, 210 Ariz. 317, 319 ¶ 10, 110 P.3d 1280, 1282 (App. 2005). As the Court of Appeals has stated.

Probation is a matter of "legislative grace." *State v. Smith*, 112 Ariz. 416, 419, 542 P.2d 1115, 1118 (1975). A trial court has no jurisdiction to impose probationary terms except as provided for by the legislature. See *State v. Jordan*, 120 Ariz. 97, 584 P.2d 561 (1978); see also *State v. Vargas-Burgos*, 162 Ariz. 325, 783 P.2d 264 (App. 1989) (trial court has no subject matter jurisdiction to impose sentence except as mandated by statute).

Coy v. Fields, 200 Ariz. 442, 444 ¶ 4, 27 P.3d 799, 801 (App. 2001).

The statutes dealing with probation are in Title 13, Chapter 9 (A.R.S. § 13-901 *et seq.*); § 13-901(A) provides in part:

If a person who has been convicted of an offense is eligible for probation, the court may suspend the imposition or execution of sentence and, if so, shall without delay place the person on intensive probation supervision pursuant to § 13-913 or supervised or unsupervised probation upon such terms and conditions as the law requires and the court deems appropriate

Thus, under § 13-901(A), absent any other statutory disqualification, anyone who is eligible for supervised probation is also eligible for intensive probation. *State v. Woodruff*, 196 Ariz. 359, 360-361 ¶ 8, 997 P.2d 544, 545-546 (App. 2000).

Whenever the court grants probation under A.R.S. § 13-901, “the court shall set forth at the time of sentencing and on the record the factual and legal reasons in support of each sentence.” A.R.S. § 13-901(H).